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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES DONATO, JUDGE

IN RE: CAPACITORS ANTITRUST )  
LITIGATION. )  
                                )   **No. C 14-03264 JD**  
                                )  
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San Francisco, California  
Friday, October 14, 2016

**TRANSCRIPT OF PROCEEDINGS**

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1 | Friday, October 14, 2016

10:07 a.m.

## P-R-O-C-E-E-D-I-N-G-S

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4                   **THE CLERK:** Calling civil 14-3264, In Re Capacitors  
5 Antitrust Litigation.

6 Counsel.

7                   **MR. SAVERI:** Good morning, Your Honor. Joseph Saveri  
8 on behalf of the direct purchaser plaintiffs.

9 MR. WILLIAMS: Good morning, Your Honor.

10 Steve Williams on behalf of the indirect purchaser plaintiffs.

11 MS. BAUER: Good morning, Your Honor. Ashley Bauer  
12 for defendant Nitsuko Electronics.

13                   **MR. PRESCOTT:** Good morning. Darryl Prescott for the  
14 Okaya defendants.

15                   **MS. HAVSTAD:** Megan Havstad on behalf of the Rohm  
16 defendants.

17                   **MR. NICOUD:** Trey Nicoud on behalf of the NEC Tokin  
18 defendants.

19 THE COURT: Okay.

20                   **MR. JAECKEL:** Good morning, Your Honor. Jeff Jaeckel  
21 on behalf of Fujitsu Limited.

22 THE COURT: Good morning.

23 All right. Mr. Williams and Mr. Saveri, I have a couple  
24 of questions.

25 MR. SAVERI: Yep.

1                   **THE COURT:** So the scope of the release -- I'm just  
2 going to go through them in my order -- seems broad.

3                   So remember we had the consumers come in downstream. The  
4 release is not going to compromise their claims in any way; is  
5 that right?

6                   **MR. SAVERI:** The consumers?

7                   **THE COURT:** The people who bought goods that had the  
8 capacitors incorporated in them.

9                   **MR. SAVERI:** No. Our -- our -- our clients, our class  
10 bought Capacitors.

11                  **THE COURT:** No, no, I know.

12                  The scope of the release is not releasing any consumer  
13 claims, any downstream purchaser claims; right?

14                  **MR. SAVERI:** No.

15                  **THE COURT:** It starts off saying any and all consumer  
16 claims and anything else is released. And then it has a  
17 sentence in there that seems to take it back.

18                  **MR. SAVERI:** Yes.

19                  **THE COURT:** And I want you to confirm for me that  
20 those people who bought an Apple phone that contains a  
21 capacitor are not having their claims released; right?

22                  **MR. SAVERI:** I can confirm that.

23                  **THE COURT:** Mr. Williams?

24                  **MR. WILLIAMS:** Confirm that as well, Your Honor.

25                  **THE COURT:** That's the same for all -- I only looked

1 at one or two of them. It's the same for all of them; right?

2           **MR. SAVERI:** Yes, Your Honor.

3           **THE COURT:** Okay. Now, the other thing that I'm not  
4 clear about is if a class member does not get a check and  
5 cashes it, are they considered to be releasing their claims?  
6 Are they bound by the release?

7           **MR. SAVERI:** Your Honor, yes, unless they've opted  
8 out.

9           **THE COURT:** All right. I disfavor that.

10          **MR. SAVERI:** Okay.

11          **THE COURT:** If you didn't get paid, you don't give a  
12 release. There are no free releases. So you're going to have  
13 to rework that; all right?

14          **MR. SAVERI:** Your Honor, let me make sure I understood  
15 your question.

16          A class -- there's a member of the class. They don't opt  
17 out. They do not file a claim form, so they don't participate  
18 in the distribution of settlement proceeds.

19          My reading of the way it's drafted right now is that the  
20 claims of those individuals -- I mean, for the direct  
21 purchasers who would have received notice, elected not to  
22 participate in the claims program, would be released by -- by  
23 the release.

24          **THE COURT:** Well, you're packing a lot of assumptions  
25 in there. They chose -- they got notice. They chose not to

1 exercise their claims.

2           **MR. SAVERI:** Yes.

3           **THE COURT:** I'm not going to live with those  
4 assumptions. I have a simpler rule, and that is if there is a  
5 class member and for some reason they don't get notice, or if  
6 they did get notice they didn't respond, whatever, no release,  
7 and they don't cash a check, all right, they've got to have  
8 money in their pocket before I'm going to say they released  
9 their claims. All right?

10           **MR. SAVERI:** I understand that.

11           **THE COURT:** That's what I'm saying. So if it's not in  
12 there, you need to have it in there, because that's what I  
13 want.

14           **MR. SAVERI:** Okay. Your Honor, I hear you. I just  
15 wanted to make sure that we were on the same page.

16           **THE COURT:** Yes.

17           **MR. SAVERI:** So, for example, a class member -- this  
18 hypothetical -- submits a claim form pursuant to the settlement  
19 procedure, received -- is sent a check, is transmitted a check  
20 but it never gets cashed, would --

21           **THE COURT:** It gets lost, somebody spills coffee on  
22 it, somebody embezzles it, yes, they're not going to give up  
23 their -- they're not going to be included in the release if  
24 they don't get some money, okay.

25           **MR. SAVERI:** Yeah.

1                   **THE COURT:** There are no free -- let's make it simple.  
2 There are no free releases. You opt out, fine.

3                   **MR. SAVERI:** Yes.

4                   **THE COURT:** If they send you a letter saying, we hate  
5 class actions -- and this happens every so often -- we don't  
6 like you, we don't want to be part of this thing, deem it an  
7 opt-out, whatever, that's fine. Okay. But if there's any  
8 mystery, maybe the notice got there, maybe it didn't; maybe  
9 they got a check, maybe they didn't, the bottom line is if you  
10 can't show me that they got money, I'm not going to have them  
11 be released, okay. I want you to build that in there.

12                  Let me ease into this. You need to do some work for me to  
13 consider the next step of approval. That's Project A.

14                  **MR. SAVERI:** I understand, Your Honor.

15                  **THE COURT:** Project B is this: Now, I am mystified  
16 about how you're handling fees. Now, both of you say you're  
17 not asking for fees at this time. One of you, I think  
18 Mr. Saveri, you want some costs and expenses paid.

19                  **MR. SAVERI:** Correct.

20                  **THE COURT:** A hefty chunk, about 23 percent of the  
21 settlement amount.

22                  **MR. SAVERI:** Yes, Your Honor.

23                  **THE COURT:** Mr. Williams, you're okay. You don't need  
24 that?

25                  **MR. WILLIAMS:** Your Honor, we've indicated we may,

1 before final approval, request 10 percent for costs incurred to  
2 date. And if we do, we will file those motions.

3           **THE COURT:** That's 10 percent on top of what the DPPs  
4 want?

5           **MR. WILLIAMS:** Well, it's a separate fund. Their fund  
6 is separate and distinct from ours.

7           **THE COURT:** That's right. Okay.

8           Now, what are you going to do about fees? I mean, I  
9 can't -- you-all want me to approve these finally in May;  
10 right? You want final approval in May.

11          I can't finally approve something when the class doesn't  
12 even know how much the lawyer is going to be taking it out for  
13 fees.

14          What are they going to object to? What if you come in and  
15 say, after approval, now we want 80 percent of the fund for  
16 fees? I mean, putative class members or the certified class  
17 members should know that before the final approval happens.

18          **MR. WILLIAMS:** Your Honor, we are not seeking fees  
19 now. We don't intend to seek fees before final approval of the  
20 settlements. And at the time we do seek fees, we intend to  
21 give notice to all class members so that they have an  
22 opportunity to be heard and to object at that time.

23          And nothing comes out of any of the settlement funds for  
24 attorneys' fees until that notice/opportunity to be heard and  
25 Your Honor considers it.

1                   **THE COURT:** You're going to wait until the end of the  
2 case, basically, and do a single fee motion; is that right?

3                   **MR. WILLIAMS:** At this time, that is our intention.

4                   **THE COURT:** And then you're going to have these little  
5 pots. Let's say you have six separate settlement pots. You're  
6 just going to dip into those and say our fees are a hundred  
7 million. I'm just guessing. Just a simple figure, all right.  
8 Fees are a hundred million, and we're going to allocate them in  
9 the following fashion to each of these settlement pots.

10                  **MR. WILLIAMS:** That's how we would do it, Your Honor.

11                  **MR. SAVERI:** I have a slightly different answer to  
12 that question, Your Honor.

13                  **THE COURT:** Come a little closer, please. I can't  
14 hear you.

15                  **MR. SAVERI:** Your Honor, I have a slightly  
16 different -- I have a different answer to that question.

17                  We think it's reasonably likely that there will be  
18 additional settlements. So there will be sequential series of  
19 settlements. Depending on when those settlements are reached,  
20 and the amounts of those settlements, we would anticipate that  
21 we would make an application for fees at the time of a  
22 subsequent settlement.

23                  We would not ask -- consistent with what Mr. Williams  
24 said, we would not ask for any fees without notice to the class  
25 and an opportunity to object to the fees that are requested.

1       So we anticipate that there may be interim sequential  
2 settlements and that we, in connection with those, would be  
3 making an application for fees.

4           The notice that would be given at that time --

5           **THE COURT:** I just -- let me just jump in.

6           I don't understand. I mean, how can I give final approval  
7 to this settlement but say, at the same time, there's a big  
8 black box about fees? I don't know when they're going to be  
9 asked for. I don't know who's going to ask for them. And I  
10 don't know how much, but I'm finally approving this.

11          I'm not comfortable with that.

12          **MR. SAVERI:** And consistent with what has been done in  
13 other cases, the notice of these settlements would go to the  
14 class, if you approve it.

15          We have stated that our intent is to ask for reimbursement  
16 of costs up to \$7 1/2 million. The class members would know  
17 that. That would be all that would be coming out of this  
18 settlement, pursuant to this notice.

19          And the release has been negotiated. The settlement can  
20 be finalized, and judgment can be entered with respect to  
21 this --

22          **THE COURT:** If you're telling me you're not asking for  
23 any fees with respect to this settlement tranche, then we're  
24 fine. Is that what you're saying?

25          **MR. SAVERI:** Well, Your Honor, I think that that is

1 correct with respect to this tranche.

2           **THE COURT:** All right. That's fine. If you're  
3 foregoing fees for this tranche, that's fine. That makes life  
4 easy. That resolves my concern.

5           Mr. Williams, I think, is not willing --

6           **MR. WILLIAMS:** That is not consistent with what we  
7 intend to do. We do intend to seek, at a later point, probably  
8 at the end of the case, an award of attorneys' fees from these  
9 settlements. But, again, not until notice is given to the  
10 class.

11          **THE COURT:** Well, I appreciate what you're saying,  
12 okay. But here's my problem: Once I give final approval, I  
13 have certified the class. The class has had the opt-out period  
14 come and gone.

15          It is conceivable, as you know, that someone could look at  
16 this and say, "This looks great," and say, "Count me in." And  
17 then they get a bill from Mr. Williams for 25 percent of the  
18 settlement and they say, "This is outrageous. Count me out."  
19 They can't be counted out at that point. They're already  
20 bound.

21          **MR. WILLIAMS:** Your Honor, I understand your concern.  
22 And I think that the only way, then, to feasibly address it  
23 would be for us to seek fees now so that the entirety of these  
24 settlements and all issues concerning them are told to the  
25 class, and they can speak --

1           **THE COURT:** That would be my preference.

2           **MR. WILLIAMS:** That is --

3           **THE COURT:** Now, before we do that, is there some  
4 reason why that doesn't work for you?

5           **MR. WILLIAMS:** There's no reason why it doesn't work,  
6 Your Honor.

7           Customarily, we actually carry that risk until later in  
8 the case. And I think one of the rationales is so that, given  
9 that it is a joint and several case, and the money goes into a  
10 collective pot, that we tend to think that until the class  
11 knows the total recovery, it is more challenging to put out a  
12 percentage and say that's a fair and reasonable award for  
13 attorneys' fees.

14           **THE COURT:** Well, but this 32.5 million is going to be  
15 distributed while the case is pending. There's no -- right? I  
16 mean, the claims are going to be made --

17           **MR. SAVERI:** Excuse me, Your Honor. It's my  
18 32.5 million. It's the direct purchasers.

19           **THE COURT:** It's going to be claimed while the case is  
20 going on.

21           **MR. SAVERI:** We have not -- there are two ways of  
22 doing this. We could wait until the very end of the case,  
23 after all the settlements are in and make one -- one single  
24 settlement distribution. And that's certainly done in probably  
25 the great majority of cases.

1       But in a number of antitrust cases in situations like  
2 this, there are interim distributions done at the time when  
3 it's economically feasible, when there's enough money sitting  
4 in a pot and the settlement -- you know, the administrative  
5 expenses aren't -- are -- the economies of scale are there so  
6 that it makes sense to do it.

7       So we would anticipate, depending on what happens, that  
8 we -- if we want to make an interim distribution, because we do  
9 think it's important to get money to the class members as soon  
10 as economically feasible, that we would come back in here and  
11 say we've -- our pot is big enough, it makes economic sense to  
12 distribute it, and we should have an interim distribution.

13       If you're not comfortable with that, Your Honor, we can  
14 wait until the end.

15           **THE COURT:** Well, look. I am fine. But I want it to  
16 be consistent.

17       So if we're going to treat these tranches as little  
18 mini -- total mini settlements or subgroup settlements, then  
19 let's get it all done at the same time. Get the fees done. I  
20 want it all upfront for the class members.

21           **MR. SAVERI:** Your Honor --

22           **THE COURT:** You have a 32.5 million pot. You may have  
23 more later. We're just dealing with this pot. Here are the  
24 requests for the fees. Here is the request for the expenses.  
25 Here's the opt-out time. What do you want to do?

1                   **MR. SAVERI:** And, Your Honor, I'm completely  
2 comfortable proceeding with that.

3                   **THE COURT:** I would prefer to do that.

4                   Now, if you're telling me you're going to have three or  
5 four or five of these deals, and you don't want to have to send  
6 out three or four or five rounds of notice because it adds  
7 \$300,000 to expense that comes out of the class pockets, then  
8 we can talk about that.

9                   **MR. SAVERI:** Your Honor, excuse me. I don't mean to  
10 interrupt you.

11                  Those are issues, frankly, that we need to consider.  
12 Frankly, I know in the direct purchaser case, because our class  
13 is smaller and we can proceed with notice, the cost to us of  
14 notice of incremental settlements is different than for --

15                  **THE COURT:** Somebody said it's 200 grand for this  
16 first round of notices.

17                  **MR. SAVERI:** I think we're going to come in a lot  
18 lower than that.

19                  **THE COURT:** That's not insignificant.

20                  **MR. SAVERI:** And that's true. We wanted to give  
21 ourselves enough room to do it correctly. But we anticipate  
22 less, frankly, Your Honor.

23                  **THE COURT:** You do?

24                  **MR. SAVERI:** We do.

25                  **THE COURT:** Mr. Williams has a different --

1                   **MR. WILLIAMS:** Your Honor, in our case, while we have  
2 direct mail information for some class members, because the  
3 class members don't deal directly with the defendants, we can't  
4 be certain that we have all of that.

5                   And we think for that reason, in this type of case, we  
6 need to do some forms of publication and internet notice. And  
7 that's why our notice costs more than the direct. And that's  
8 typically how, in these cases, it works, because these  
9 defendants have that information for the direct purchasers.

10                  **THE COURT:** Well, that makes sense. So you are going  
11 to arrange that today. I want you to -- and talk with your  
12 defense people, the colleagues on the defense side, to the  
13 extent you need to. You may not need to. This is mainly for  
14 you. I want a master plan, okay?

15                  **MR. SAVERI:** Okay.

16                  **THE COURT:** Just tell me how you want to do this. I  
17 am fully supportive of settlements along the way. There is no  
18 problem with that. I just want these details to be thought  
19 through so we're all on the same page. You have a roadmap.

20                  Sounds to me like you two are not, you know, at each  
21 other's throats, but you're not in full agreement about the  
22 pacing of distributions and how to handle fee requests and so  
23 on. I'm sure they are easily solvable problems.

24                  But I would prefer a detailed roadmap on how we're going  
25 to do this, starting now, going forward. So that's the macro

1 project.

2           **MR. SAVERI:** May I?

3           **THE COURT:** Yes.

4           **MR. SAVERI:** May I ask two questions?

5           **THE COURT:** Of course.

6           **MR. SAVERI:** First, I think that makes a lot of sense.  
7 We're certainly comfortable with making interim fee  
8 applications based on the settlements as they come forward. It  
9 is certainly the case, because of the different economics or  
10 the structure of the classes, that Mr. Williams and I may have  
11 different views about when it's appropriate economically for  
12 the benefit of the people we represent separately to give  
13 notice to do a settlement distribution.

14           So I want to be clear that I anticipate that there's  
15 not -- there won't be exact congruence between the two of us.  
16 We have different economic realities.

17           **THE COURT:** I understand. And that's perfectly fine.  
18 And we will reason together.

19           All I want is a practical easy-to-administer plan that is  
20 totally transparent and totally fair to potential class  
21 members, okay.

22           I don't want any downstream surprises. I don't want any  
23 asterisks saying, this is the amount you're going to receive,  
24 subject to some mysterious fees proceedings at some date in the  
25 future. I want it to be all above board so they get it, okay.

1       And also, so you know and everybody else knows, next time  
2 you come in, it's a 10-minute proceeding maybe, if everything  
3 else looks good, and we don't have to say, How are we going to  
4 do this one?

5           **MR. SAVERI:** Yes.

6           **THE COURT:** Just a good organizing plan.

7           **MR. SAVERI:** Yes.

8           **THE COURT:** Now, I want that other point addressed.

9       The other question I have is, nothing is ever going back  
10 to the defendants in terms of reversion; right?

11          **MR. SAVERI:** That's absolutely true, Your Honor.

12          **THE COURT:** In a case like this, I can't imagine there  
13 would be much left over for anything; right?

14          **MR. SAVERI:** My experience, at least in the direct  
15 purchaser cases, is class members like receiving the checks,  
16 and they cash them.

17          **THE COURT:** Yeah. And if they have any left over, you  
18 give them another round; right?

19          **MR. SAVERI:** And we just keep doing it until it's  
20 basically done. And we usually get to zero.

21          **THE COURT:** Okay. I think *cy près* under the current  
22 Ninth Circuit laws would be hard to do in this case.

23       Is there a fund for lonely capacitors or --

24          **MR. SAVERI:** We are not going to contribute to the  
25 benevolence society of capacitor users or manufacturers.

1           **THE COURT:** Okay.

2           All right. So those were my main issues. Anything else  
3 you want to talk about?

4           **MR. SAVERI:** No, Your Honor.

5           **THE COURT:** Mr. Williams?

6           **MR. WILLIAMS:** No, Your Honor. I think we will get  
7 together with the defendants and have --

8           **THE COURT:** I can have you back in, in a week or two  
9 if you want. So don't, you know -- you just get it done when  
10 you get it done, and we can come back in on another Friday.

11          Are Fridays okay?

12          **MR. SAVERI:** Can I suggest we come back in a week?

13          **THE COURT:** Next week I'm actually out. I could do  
14 the 28th.

15          **MR. SAVERI:** I'm hesitating because I have, basically,  
16 the first phase of a trial in San Diego starting. I think  
17 we're dark.

18          Your Honor, I'm almost positive that the judge is going to  
19 be dark on that Friday, so I think it works.

20          **THE COURT:** You're in trial then?

21          **MR. SAVERI:** Yes.

22          **THE COURT:** You shouldn't -- when does that trial  
23 start?

24          **MR. SAVERI:** The first phase starts Monday the 24th.  
25 And the first phase is three weeks. And then we come back in

1 January for the second. But --

2           **THE COURT:** Is this the Southern District?

3           **MR. SAVERI:** No. It's, frankly, my last pre-CAFA case  
4 in San Diego Superior Court.

5           **THE COURT:** Who do you have? Who's your judge?

6           **MR. SAVERI:** Judge Styn.

7       Given CAFA, frankly, Your Honor, it's a little bit unusual  
8 to be back in state court. And no offense, but in some ways I  
9 miss it.

10          **THE COURT:** I don't.

11          (Laughter)

12          **THE COURT:** We can reasonably differ on that.

13          **MR. SAVERI:** I can understand a different point of  
14 view on that, Your Honor.

15          **THE COURT:** One of my last cases before I took the  
16 bench was in San Diego Superior.

17          Okay.

18          **MR. SAVERI:** I have some interest in trying to move  
19 this along. That's why I'm willing to --

20          **THE COURT:** No, I know.

21       I'm trying to get some date advice. I know I can't do  
22 next Thursday and Friday. We have court business that takes up  
23 both days.

24       There's no way you're going to get it done by Wednesday, I  
25 don't think.

1                   **MR. SAVERI:** If not then, Your Honor, then I'll  
2 probably -- if my schedule is driving, it's going to be the  
3 middle of November. Maybe that's -- maybe that's okay. Maybe  
4 that's okay.

5                   **MR. WILLIAMS:** And I would note, we did notice ours  
6 originally for November 10.

7                   **THE COURT:** I can do 11/4. You're still going to be  
8 in trial.

9                   **MR. SAVERI:** I'll take it, Your Honor. I'm going to  
10 make it work.

11                  **THE COURT:** Do you want to fly up that morning?

12                  **MR. SAVERI:** I actually think we'll be done by then.  
13 That will work.

14                  **THE COURT:** You'll be done by then?

15                  **MR. SAVERI:** Yeah.

16                  **THE COURT:** Okay. Just to be safe, why don't we do  
17 11:00 a.m. on November 4th?

18                  **MR. SAVERI:** Thank you, Your Honor.

19                  **THE COURT:** Now, get that to me at least a week ahead  
20 of time.

21                  **MR. SAVERI:** Yes.

22                  **THE COURT:** All right. That will be great.

23                  **MR. WILLIAMS:** I'm sorry, Your Honor, I --

24                  **THE COURT:** Can't do that?

25                  **MR. WILLIAMS:** I apologize. I just realized I'm in

1 the Eastern District of New York for a final approval hearing  
2 on 11/4.

3 **THE COURT:** Can somebody else maybe --

4 **MR. WILLIAMS:** It's myself and Mr. Zapala, and we're  
5 both at that hearing.

6 **MR. SAVERI:** I'm happy to try to accommodate  
7 Mr. Williams' schedule.

8 **THE COURT:** Then it's 11/10, as regularly noticed.

9 **MR. SAVERI:** That's when it was noticed. We just came  
10 back to it, so that's fine, Your Honor.

11 **THE COURT:** Well, this is still productive. We had  
12 the discussion now rather than 11/10, taking you in December.

13 **MR. SAVERI:** I think this made a lot of sense to at  
14 least have this preliminary kind of discussion.

15 **THE COURT:** Defendants, anything?

16 **MS. BAUER:** Is that 11/10, Your Honor, at 11:00 a.m.?

17 **THE COURT:** No. That is the regular Thursday  
18 calendar.

19 Okay. Anything else I can help you with?

20 **MR. SAVERI:** Not today, Your Honor.

21 **THE COURT:** Defendants? No. Okay. Thank you.

22 **MR. WILLIAMS:** Thank you.

23 **MR. SAVERI:** Thank you, Your Honor.

24 (At 10:28 a.m. the proceedings were adjourned.)

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2                   **CERTIFICATE OF REPORTER**  
3

4                   I certify that the foregoing is a correct transcript  
5 from the record of proceedings in the above-entitled matter.  
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8                   DATE:     Friday, October 14, 2016  
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14                   Katherine Powell Sullivan, CSR #5812, RMR, CRR  
15                   U.S. Court Reporter  
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